

would be granted on the condition that no restrictions on resale are imposed.<sup>49</sup> Thus, given the congressional mandate to create regulatory parity and the prohibition on restricting the resale of cellular service, all CMRS providers should be prohibited from restricting resale of their services, with one exception that will be discussed in the following section.

Prohibiting restrictions on resale will enhance competition without imposing burdens upon the CMRS carriers providing the services being resold. The Commission has never required special rates that promote resale and has recognized that a resale market need not develop for every service.<sup>50</sup> In addition, there is little burden associated with satisfying any resale requirements. Accordingly, BellSouth believes that the Commission should forbid restrictions on the resale of CMRS service, subject to the exception described below.

**B. Facilities-Based CMRS Providers Should Be Permitted to Prohibit Resale of Their Service by Facilities-Based Competitors**

Although BellSouth generally supports the Commission's prohibition on restricting the resale of CMRS service, an exception should be made for resale by facilities-based competitors. The Commission and Department of Justice have previously recognized that the rationale for prohibiting resale restrictions between facilities-based carriers ceases to exist when both carriers are fully operational.<sup>51</sup> A facilities-based carrier who can resell service obtained from its competitor under

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<sup>49</sup> *Cellular Communications Systems*, CC Docket 79-318, *Report and Order*, 86 FCC 2d 469, 511 (1981), *recon.*, 89 FCC 2d 58, *further recon.*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom. United States v. FCC*, No. 82-1526 (D.C. Cir. March 3, 1983).

<sup>50</sup> *Id.*

<sup>51</sup> *See Cellular Resale Policies*, CC Docket No. 91-33, *Report and Order*, 7 FCC Rcd. 4006, 4007 (1992).

its own name may defer making the capital expenditures necessary to perfect its system. Thus, true price and quality competition among facilities-based carriers will be delayed.

For cellular carriers, the Commission has allowed carriers to restrict resale by their facilities-based competitors only after their systems have had a full opportunity to expand -- *i.e.*, after the competitor's five-year fill-in period has expired.<sup>52</sup> BellSouth urges the Commission to limit the obligation to permit resale by facilities-based competitors more strictly in the future.

The Commission has recognized that allowing a licensee to resell its competitor's service diminishes its incentive to build out its system thoroughly and promptly. As new providers of CMRS are authorized, such as ESMRs and Broadband PCS licensees, the public interest would not be served by requiring existing CMRS providers, such as cellular carriers, to provide them with resale capacity during their build-out period. Instead, the new carriers should be encouraged strongly to develop and deploy the infrastructure needed to provide competitive facilities-based service.

Moreover, requiring existing licensees to provide resale capacity as a back-up cushion for their competitors forces the incumbents to make substantial expenditures to make such capacity available -- capacity that will only be needed for the transition period. Incumbents should not be saddled with the obligation to make such investments for the benefit of their competitors, because their customers will ultimately have to bear that cost. The new competitors should bear the cost of the facilities needed to accommodate their own customers.

Once a facilities-based CMRS provider is operational, this policy should continue to apply. An operational CMRS licensee should no more be given the opportunity for a free ride on its competitor's network than it should before it is fully operational. If an operational CMRS provider

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<sup>52</sup> See *id.* at 4007-08.

had a FCC-guaranteed right to resell the service of other CMRS providers, it would have no incentive to continue improving its service to maintain its competitive position. Moreover, the licensee with superior coverage or service would be unable to differentiate its product from that of the inferior system, thus essentially eliminating facilities-based competition. The Commission has held that "there will be no adverse consequences by eliminating competitor resale by a fully operational competitor."<sup>53</sup>

**C. The Commission Should Make Clear that Its Resale Policy Permits a Bell Company LEC to Resell Cellular Service**

In extending its cellular resale policies to CMRS, the Commission should eliminate any ambiguity in the cellular rules regarding whether Bell Company LECs may resell cellular service. While cellular carriers are not permitted to restrict resale of their service (except in the case of operational facilities-based competitors), the structural separation rules for Bell Companies may inadvertently result in forcing the Bell cellular subsidiaries to restrict resale to their affiliated telephone companies. Currently, Section 22.901 of the Rules requires structural separation between the Bell Companies' LEC and cellular units -- a Bell Company may "provide" cellular service only through its cellular subsidiary.<sup>54</sup> This rule is ambiguous, because it does not make clear whether resale by a Bell Company's LEC constitutes the "provision" of cellular service. As a result, it is unclear whether a Bell cellular affiliate either must refuse to allow resale by its sister telephone company, as a consequence of the separation rule, or may not restrict resale by its LEC affiliate.

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<sup>53</sup> *Id.* at 4008.

<sup>54</sup> 47 C.F.R. § 22.901.

If the Commission eliminates the cellular subsidiary requirement in other proceedings where such action is under consideration,<sup>55</sup> this issue will, of course, become moot. To the extent a structural separation rule remains for the Bell Companies' cellular service, however, the ambiguity should be eliminated. It is essential that the Commission do so in this proceeding, because the Bell Companies' LECs may become PCS licensees. To the extent that PCS licensees are permitted to resell cellular service, regulatory parity requires that this opportunity should be available to PCS licensees that happen to be Bell Company LECs on the same basis as others. A lack of regulatory parity clearly would diminish the value of PCS licenses to the Bell Company LECs at the auction, contrary to the public interest. The CMRS resale policy adopted in this proceeding should apply equally to all potential resellers. There is no basis for drawing a distinction.

The Commission does not have to modify its existing cellular separation rule to make clear that LECs may resell cellular service, because the rule can be clarified by interpreting it consistent with its purpose. It is clear from both the rule itself and the decision adopting it that the Commission's purpose was to ensure that the LEC did not have an opportunity to cross-subsidize cellular services.<sup>56</sup> Thus, the LEC cannot promote or market cellular service on behalf of the cellular affiliate, as its agent. Resale, however, is not the same as acting as an agent. An agent acts on behalf of the cellular carrier, while a reseller purchases service as an independent actor and then sells it to customers on its *own* behalf. The LEC would obtain service for resale on exactly the same

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<sup>55</sup> See *CMRS Second Report*, 9 FCC Rcd. at 1493; Comments of the Bell Atlantic companies in GN Docket 93-252 at 7 & n.5 (June 20, 1994); Reply Comments of BellSouth in GN Docket 93-252 at 4-6 (July 11, 1994); see also BellSouth Comments on Further Reconsideration in GN Docket 90-314 at 39-40 (Aug. 30, 1994).

<sup>56</sup> See 47 C.F.R. § 22.901; see also *Cellular Communications Systems*, 86 FCC 2d at 493-95; 89 FCC 2d at 78-79.

terms as any other reseller.<sup>57</sup> The cellular service is "provided" by the cellular company to the LEC and other resellers, who in turn offer that service to others independently of the cellular company.

Moreover, BellSouth submits that it is clear from the rule's reference to "separate computer and transmission facilities"<sup>58</sup> that the Commission's intent was to bar the LEC from participating in the provision of facilities-based cellular service, not resale. A local exchange carrier reselling either its own affiliate's cellular service or another company's cellular service is not utilizing LEC computer and switching facilities in the provision of cellular service.

Accordingly, BellSouth asks that the Commission make clear that, to the extent Section 22.901 continues to impose limits on the ability of the Bell Company LECs to hold cellular licenses, that rule does not in any way limit their ability to resell cellular service.

### **III. EQUAL ACCESS REQUIREMENTS**

#### **A. The Commission Should Enforce Regulatory Parity by Imposing Uniform Equal Access Requirements on CMRS Providers**

BellSouth believes an equal access obligation should never have been applied to Bell Company-affiliated cellular carriers and that wireless services should be removed from the scope of the equal access requirement of Section II of the Modification of Final Judgment ("MFJ"). To this end, BellSouth agrees with the position of Commissioner Barrett that "the Commission's goal

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<sup>57</sup> Just as the cellular subsidiary must obtain services from its affiliated LEC on a non-discriminatory, arm's length basis, *see* 47 C.F.R. § 22.901(d)(1), any cellular service provided by the cellular subsidiary to the LEC for resale would have to be on the same terms as are available to other resellers.

<sup>58</sup> 47 C.F.R. § 22.901(c)(2).

should be to develop a transition plan away from MFJ restrictions."<sup>59</sup> The MFJ's imposition of equal access requirements on only some CMRS providers, is an obstacle to be overcome before CMRS is characterized by what Commissioner Chong characterizes as a "more competitive model," where the Commission might properly refrain from the regulatory imposition of interconnection and equal access obligations on service providers.<sup>60</sup>

Absent a removal of current equal access requirements imposed on the Bell Companies in providing cellular service, however, BellSouth believes that these obligations should be applied to all CMRS providers equally. Therefore, either a total elimination of the equal access requirement is necessary to achieve competitive parity from a regulatory perspective, or equal access obligations should be imposed on all CMRS operators to fulfill Section 332's regulatory parity mandate.

**1. The Competitive CMRS Marketplace Should Not Be Subject to Any Equal Access Requirement, But For the Competitive Imbalance Caused by the MFJ**

BellSouth believes that the equal access obligation<sup>61</sup> currently imposed upon the cellular carriers of the Bell Companies by the MFJ<sup>62</sup> is unlawful. Accordingly, it has argued before the U.S.

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<sup>59</sup> Notice, Separate Statement of Commissioner Andrew C. Barrett at 1.

<sup>60</sup> Notice, Separate Statement of Commissioner Rachelle B. Chong at 1.

<sup>61</sup> The equal access obligation was traditionally defined as "the obligation to treat equally all interexchange carriers (IXCs) seeking access to the local exchange network." Notice at ¶ 6.

<sup>62</sup> *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 226-34 (D.D.C. 1982), *aff'd sub nom Maryland v. United States*, 460 U.S. 1001 (1983) (MFJ).

District Court<sup>63</sup> that wireless services should be removed from the scope of the equal access requirement of Section II of the MFJ.<sup>64</sup>

The equal access obligations currently imposed upon the Bell Companies' cellular affiliates grew out of the MFJ and were implemented by the MFJ court and the Commission over several years.<sup>65</sup> The MFJ imposed equal access obligations upon the local exchange telephone operations of the Bell Companies under the theory that the local exchange was a regulated monopoly which had to be isolated from competitive markets.<sup>66</sup> The Department of Justice concluded that the MFJ's equal access requirements should be extended to cellular services because they appeared to fall within the MFJ's definition of "local exchange" operations.<sup>67</sup>

Nevertheless, BellSouth has shown in its pleadings before the MFJ court that "the Decree's equal access obligations . . . were *not* designed to remedy any perceived abuses of market power in

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<sup>63</sup> Supplemental Memorandum of BellSouth Corporation in Support of Its Motion for Generic Wireless Relief, *United States v. Western Electric Co.*, Civil Action No. 82-0192 (HHG) (June 20, 1994); Motion of BellSouth Corporation for Generic Wireless Relief, *United States v. Western Electric Co.*, Civil Action No. 82-0192 (HHG) (Apr. 15, 1994) (Motion for Generic Wireless Relief); Conditional Motion of BellSouth Corporation for a Modification of the AT&T Consent Decree to Remove Wireless Services from the Scope of the Interexchange Restriction and Equal Access Requirement of Section II, *United States v. Western Electric Co.*, Civil Action No. 82-0192 (HHG) (March 1, 1994).

<sup>64</sup> Such relief is appropriate on several grounds: (1) the parties to the MFJ did not intend to require that the Bell Companies provide equal access to wireless switches; (2) the current equal access obligations are increasingly anticompetitive in light of fundamental changes in the wireless markets; and (3) there is no substantial possibility that such relief would enable BellSouth to impede competition. *See* Motion for Generic Wireless Relief at 1.

<sup>65</sup> *See Notice* at ¶¶ 6-7.

<sup>66</sup> Comments of Ameritech, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, and U S West, Inc. on MCI Petition in RM-8012 at 7 (Aug. 3, 1992) (BOC Equal Access Comments).

<sup>67</sup> *Id.*

*wireless markets*. Instead, they were designed to ensure that the Bell Companies would not use monopoly power in *local landline exchange markets* to impede competition in other markets."<sup>68</sup>

AT&T has itself explained that

The Decree . . . is intended to prevent the regional companies from having the alleged opportunities and incentives to use their control over *landline exchange networks* to obtain unfair competitive advantages in related competitive markets *by denying competitors access to necessary exchange facilities* or by using revenues from local exchange services to subsidize competitive offerings.<sup>69</sup>

Accordingly, there was and is no basis upon which to extend the equal access obligations imposed by the MFJ upon local exchange operations of the Bell Companies to the cellular and other wireless operations of their affiliates.

Further, such obligations are increasingly anticompetitive and cannot be justified in the competitive CMRS market. BellSouth does not have a monopoly in any wireless service in any area.<sup>70</sup> In each market, a cellular licensee faces actual or potential competition from at least one other facilities-based carrier, cellular resellers, Enhanced or traditional SMRs, and PCS providers.<sup>71</sup> In such a competitive CMRS marketplace,<sup>72</sup> the imposition of equal access obligations upon the

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<sup>68</sup> Motion for Generic Wireless Relief at 6 (emphasis added).

<sup>69</sup> *Id.* at 8-9 (quoting The Bell System's Further Memorandum In Support of Its Request for a Ruling That the Regional Companies are Permitted to Provide Public Radio Service Without Regard to LATA Boundaries, at 13 (May 9, 1983) (emphasis added)).

<sup>70</sup> Motion for Generic Wireless Relief at 10, 26-44.

<sup>71</sup> *Id.* at 10-11.

<sup>72</sup> See *supra* Section I.B.1; see also *Regulatory Treatment Notice*, 8 FCC Rcd. at 8000; *New Personal Communications Services*, GN Docket 90-314 & ET Docket 92-100, *Notice of Proposed Rule Making and Tentative Decision*, 7 FCC Rcd. 5676, 5712 (1992) (*PCS Notice*). BellSouth has previously shown that the cellular marketplace is competitive. See PCS Comments of BellSouth in GN Docket 90-314 & ET Docket 92-100 at 67-69 (Nov. 9, 1992).

wireless cellular facilities of BellSouth and the other Bell Companies simply harms competition and consumer welfare.

BellSouth and other Bell Companies have previously taken the position before the Commission that new or additional regulation is not required to level the playing field of equal access where competitive markets are concerned.<sup>73</sup> They have urged the Commission to support their position before the MFJ court that the selective imposition of equal access obligations upon their cellular affiliates impedes competition and is therefore not in the public interest.<sup>74</sup> Until the currently-imposed equal access obligations are eliminated for the Bell Companies' cellular affiliates, BellSouth believes that principles of regulatory parity and fair competition, consistent with the public interest, require that equivalent equal access obligations be imposed upon non-Bell-affiliated cellular licensees and other two-way CMRS providers.

## **2. To Achieve Regulatory Parity, the FCC's Equal Access Requirements Should Parallel Those Imposed by the MFJ**

The Commission has sought comment regarding whether equal access obligations should be extended to non-Bell-affiliated cellular carriers and providers of CMRS generally.<sup>75</sup> The Commission has specifically stated that in evaluating these issues, "the goals and policies of Section 332 and the *CMRS Second Report* [should be kept] in mind."<sup>76</sup> In amending Section 332 of the Communications Act, Congress sought to ensure that "similar services would be subject to

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<sup>73</sup> See BOC Equal Access Comments at 2.

<sup>74</sup> See *id.* at 2, 16-17; see also Comments of Southwestern Bell Corporation at on MCI Petition in RM-8012 at ii, 1-3 (Aug. 3, 1992) (Southwestern Bell Equal Access Comments).

<sup>75</sup> Notice at ¶¶ 35, 44.

<sup>76</sup> *Id.* at ¶ 15.

consistent regulatory classification."<sup>77</sup> Similarly, in the *CMRS Second Report*, the Commission sought to implement "an even-handed regulatory scheme under Section 332 [which] would promote competition by refocusing competitors' efforts away from strategies in the regulatory arena and toward technical innovation, service quality, competitive pricing, and responsiveness to consumer needs."<sup>78</sup>

Accordingly, until the elimination of equal access requirements for Bell Company cellular carriers, BellSouth believes that the same equal access obligations should be extended to non-Bell Company-affiliated cellular carriers, and to CMRS providers generally, to establish a level playing field for all CMRS providers.<sup>79</sup>

Under existing equal access requirements, non-Bell Company cellular carriers can aggregate their subscriber traffic and obtain bulk discount rates in exchange for delivering all traffic to a single IXC.<sup>80</sup> As a result, they can either pass the savings on to their customers, or charge regular rates for interexchange calls and pocket the profit.<sup>81</sup> Either way, they currently have a competitive advantage over their competitors who are affiliated with Bell Companies. Regulatory parity commands the removal of this unfair competitive advantage. As the Commission has noted,

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<sup>77</sup> *Id.* at ¶ 2.

<sup>78</sup> *Id.*; see *CMRS Second Report*, 9 FCC Rcd. at 1418-20.

<sup>79</sup> See Comments of the Bell Atlantic Companies in GN Docket 93-252 at 30-35 (Nov. 8, 1994) (Bell Atlantic Regulatory Parity Comments); Comments of Southwestern Bell in GN Docket 93-252 at 31-36 (Nov. 8, 1994) (Southwestern Bell Regulatory Parity Comments); see also *Notice* at ¶ 21.

<sup>80</sup> See Comments of Bell Atlantic on MCI Petition in RM-8012 at 3 (Sept. 2, 1992) (Bell Atlantic Equal Access Comments).

<sup>81</sup> *Id.*

[the] disparate treatment of different cellular carriers with respect to equal access obligations may be inconsistent with congressional intent and the Commission's efforts in the *CMRS Second Report*.<sup>82</sup>

Under the conditions that now exist, BellSouth agrees with the Commission's tentative conclusion that equal access obligations should be imposed upon all cellular providers consistent with the principle of regulatory parity.<sup>83</sup> Specifically, until the MFJ court removes the equal access requirements for the Bell Companies' cellular systems, all cellular providers should be required to provide equal access to IXCs.

BellSouth disagrees, however, with the Commission's statement that if equal access requirements are imposed upon all cellular providers and the MFJ court ultimately removes the requirements for Bell Company cellular affiliates, that the FCC-imposed equal access obligation would continue to apply to the Bell Companies' cellular operations.<sup>84</sup> As BellSouth and the other Bell Companies have repeatedly argued, equal access requirements for cellular and other wireless services benefit only the interexchange carriers and operate to the detriment of the public and competition in the industry.<sup>85</sup> Accordingly, should the MFJ court ultimately recognize the impropriety of the existing equal access obligations, all equal access requirements that the Commission may impose for purposes of regulatory parity in this proceeding should no longer be maintained, and should be *removed* for all entities.

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<sup>82</sup> Notice at ¶ 39.

<sup>83</sup> *Id.* at ¶¶ 35, 39.

<sup>84</sup> *See id.* at ¶ 35 & n.91.

<sup>85</sup> *See* BOC Equal Access Comments at 10-16; Bell Atlantic Equal Access Comments 1, 3-4; Southwestern Bell Equal Access Comments at 2, 4-9.

Beyond cellular providers, however, the Commission also seeks comment on whether to extend equal access requirements to other CMRS providers which will compete with cellular service, particularly SMR and broadband PCS.<sup>86</sup> The Commission has noted that "service characteristics and capabilities of wide-area SMR systems will make them competitors to cellular providers," and that "broadband PCS holds the promise of being a full competitor for cellular and a potentially effective substitute for the wired local loop."<sup>87</sup> BellSouth agrees with the Commission that for these reasons, principles of regulatory parity among providers of similar services support the imposition of equal access obligations upon wide-area Enhanced SMR and PCS providers.<sup>88</sup> BellSouth further notes that because these services are not yet fully developed, the costs associated with the imposition of such obligations would be lower than the cost of modifying existing systems.<sup>89</sup>

The application of equal access obligations to one-way and predominantly one-way services, such as paging, Narrowband PCS, and mobile data services is unnecessary. The customers of such services do not generally access an IXC's network.<sup>90</sup> In the case of paging and some forms of Narrowband PCS, the customer only receives communications and does not originate interexchange

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<sup>86</sup> Notice at ¶ 44.

<sup>87</sup> *Id.* at ¶ 45.

<sup>88</sup> *See id.*

<sup>89</sup> *See id.* at ¶ 46. BellSouth further recognizes that as to smaller existing systems, the cost of modifications to accommodate equal access may be high relative to the number of customers that may be available to support additional investment. The Commission should evidence its intent to consider liberally requests to waive the requirement in such circumstances. For example, the MFJ contemplates relief from its equal access requirement for local exchange switches serving less than 10,000 access lines. *See MFJ, Appendix B (Phased-In BOC Provision of Equal Exchange Access)* at ¶ A(3), 552 F. Supp. at 233.

<sup>90</sup> *See Notice* at ¶¶ 47-48.

calls at all, eliminating any basis for imposing an equal access requirement. In other Narrowband PCS services, there may be a real-time response to the caller acknowledging delivery, as in some Narrowband PCS pioneers' preference applications. Moreover, even full two-way mobile data services typically provide for the routing of outbound customer communications over a packet-switched or similar non-common-carrier network, instead of routing such communications to a telephone number via an interexchange carrier.

For similar reasons, the MFJ court has previously held that the equal access obligations of the Bell Companies do not extend to their paging facilities.<sup>91</sup> While BellSouth supports the imposition of equal access obligations upon providers of CMRS in general to achieve regulatory parity, it acknowledges that providers of one-way and predominately one-way services, such as paging, narrowband PCS, and mobile data services, should be exempt from equal access obligations.

BellSouth further notes that CMRS providers should be required to provide equal access only upon a *bona fide* request from an IXC, and that they should be allowed to meet the equal access obligations through the LEC's access tandem, as discussed more fully below. This option would relieve any undue hardship that might otherwise be afflicted upon small CMRS providers resulting from equal access obligations.

## **B. Nature of the Equal Access Requirement**

Given that equal access obligations should be extended to all CMRS providers for purposes of regulatory parity, in the absence of other relief by the MFJ court, the question of what minimum requirements the equal access obligation should entail must be addressed. Under the MFJ, access to the local exchange must be provided to IXCs that is "equal in type, quality, and price" to that

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<sup>91</sup> See *id.* at ¶ 47 (citing *United States v. Western Electric Co.*, No. 82-0192, *Memorandum and Order*, No. 82-0192 (D.D.C. Feb. 16, 1989)).

offered to AT&T and its affiliates.<sup>92</sup> The equal access obligation for wireline carriers was implemented in phases by the MFJ court and the Commission over a period of several years.<sup>93</sup>

Generally, the MFJ required that the Bell Companies provide their customers, during the ninety days before and the ninety days after conversion, the following: (1) reasonably detailed data concerning the IXCs serving the area; (2) notification that the initial selection of an IXC is free; and (3) advice that a late selection might be more difficult.<sup>94</sup> If the customer failed to select an IXC, he or she initially defaulted to AT&T, although the Commission subsequently found this practice to be unreasonable under the Communications Act and directed the LECs to set up a Balloting and Allocation Plan in its place.<sup>95</sup>

As the Commission did with wireline telephone carriers, BellSouth supports the gradual implementation of equal access obligations for CMRS providers.<sup>96</sup> The phase-in period must be reasonable, however, and safeguards must be implemented to ensure that the phase-in period not be used as an opportunity for CMRS providers to delay the provision of equal access and thereby reap anticompetitive benefits. Additionally, BellSouth supports the Commission's tentative conclusion that the equal access obligation include the provision of direct or "1+" access,<sup>97</sup> consistent with the

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<sup>92</sup> MFJ, 552 F. Supp. at 227.

<sup>93</sup> Notice at ¶ 7.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*; see *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, *Memorandum Opinion and Order*, 101 FCC 2d 911, 920, *recon. denied.*, 102 FCC 2d 503 (1985). Balloting takes place during the presubscription period and involves LECs sending new customers ballots upon which to select their primary IXC. See 101 FCC 2d at 924-27.

<sup>96</sup> See Notice at ¶¶ 53-54.

<sup>97</sup> See *id.* at ¶¶ 84-85. Many cellular carriers do not require the digit "1" to be prefixed to the area code and number when placing a long-distance "1+" call, because it is not needed to identify long-distance calls from cellular telephones, where the entire dialed number is stored before

requirement currently imposed upon the LECs.<sup>98</sup> BellSouth urges the Commission not to require CMRS providers to provide additional equal access requirements, such as requiring "10XXX" access to non-presubscribed IXCs. This is unnecessary to ensure consumers have access to their chosen IXC, entails considerable expense at each location where it must be enabled, and is unnecessary, in light of alternate ways to access non-presubscribed IXCs, such as "800" and "950" access numbers. Finally, BellSouth agrees with the Commission and Bell Atlantic that balloting and presubscription rules should be imposed.<sup>99</sup>

**C. The Commission Should Adopt a Flexible Definition of the Geographic Areas for Equal Access**

Determining when the equal access obligation arises makes it necessary to define the local service area. This is a prerequisite to establishing where calls must be handed off to IXCs. Current service areas differ widely, depending upon the CMRS service at issue. Bell Company-affiliated cellular carriers must currently hand off to an IXC all calls that cross local access and transport area ("LATA") boundaries, unless a waiver has been granted.<sup>100</sup> Cellular systems in general currently operate within Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"), and the service areas for PCS will be defined by Basic Trading Areas ("BTAs") and Major Trading Areas

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transmission to the cellular switch.

<sup>98</sup> See *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase III, *Report and Order*, 100 FCC 2d 860, 876 (1985), *recon. denied*, 59 Rad. Reg. 2d (P&F) 1410 (1986).

<sup>99</sup> See *Notice* at ¶¶ 88, 92.

<sup>100</sup> See *id.* at ¶ 57.

("MTAs"). The boundaries of MSAs and RSAs, BTAs and MTAs, and LATAs are often not coextensive. SMRs and wide-area SMRs do not operate within defined service areas.<sup>101</sup>

These variances in local service areas create difficulties in defining the geographic areas in which equal access is to be provided. The Bell Companies have previously shown that LATA boundaries are unsuited for this purpose and have created an administrative quagmire in the case of their cellular affiliates, who have filed dozens of equal access waiver requests because cellular licensing areas have no relationship to LATA boundaries.<sup>102</sup> Indeed, even AT&T explained before divestiture that:

LATAs are simply irrelevant to mobile radio services. They were drawn in light of the existing landline local distribution plants and the goal of increased competition in providing long distance service between land-based telephones. Landline LATAs do not reflect the entirely different characteristics of the services designed to reach *moving* vehicles or other mobile units.<sup>103</sup>

Nevertheless, if the Commission were to adopt any other geographic division for equal access, such as MSAs/RSAs or MTAs/BTAs, there would be a discrepancy between the MFJ's LATA-based equal access requirements applicable to Bell Company-affiliated cellular providers and those adopted by the FCC for all other CMRS providers.<sup>104</sup>

BellSouth recognizes that LATA boundaries may impede CMRS providers in providing the type of seamless regional coverage encouraged by the Commission, and to this end has, together

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<sup>101</sup> *Id.* at ¶¶ 58-60.

<sup>102</sup> *See* BOC Equal Access Comments at 15.

<sup>103</sup> The Bell System's Further Memorandum in Support of Its Request for a Ruling That the Regional Companies are Permitted to Provide Public Radio Service Without Regard to LATA Boundaries at 4, *United States v. Western Electric Co.*, No. 82-1092 (D.D.C. filed May 9, 1983).

<sup>104</sup> *See* BOC Equal Access Comments at 15.

with other Bell Companies, sought a waiver of the applicability of LATAs to wireless services.<sup>105</sup>

The Department of Justice has said it will withhold judgment on the areas that should be used for determining the Bell Companies' equal access obligations for mobile services, pending the Commission's decision in this docket:

That issue will be taken up if the Commission decides to impose equal access on cellular or other wireless carriers, an issue now open for comment before it. The United States proposes that the Court defer redefining cellular local calling areas until the Commission has acted . . . .

It would not be sensible for the Court and the Department to embark on this mapmaking project again, at the same time as the Commission is considering the issue. . . .

It seems more sensible for the FCC to act first. If the Commission adopts equal access, and draws a map, then the Court can determine whether that map addresses the needs of the Decree and, if so, conform the Decree's cellular LATAs to the FCC's decision.<sup>106</sup>

Thus, the Commission now has the opportunity to influence the future scope of equal access under the MFJ.

The Commission should not adopt an unreasonably small equal access area, which would freeze for the foreseeable future the ability of CMRS providers to provide wide-area service. BellSouth submits that the area should largely be left to the marketplace, to the extent regulatory or judicial restrictions do not intrude. For that reason, BellSouth urges the Commission to adopt a standard that will automatically be adjusted when such artificial restrictions are modified or

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<sup>105</sup> See Motion of the Bell Companies for a Generic Waiver of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Services Across LATA Boundaries, *United States v. Western Electric Co.*, Civ. Action No. 82-0192 (HHG) (D.D.C. June 20, 1994).

<sup>106</sup> Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers, *United States v. Western Electric Co.*, Civ. Action No. 82-0192 (HHG), at 48-49 (D.D.C. filed July 25, 1994).

eliminated. BellSouth urges the Commission to adopt the following as its standard for equal access areas for CMRS:

**A CMRS provider shall provide equal access for all calls to or from points outside the smaller of (a) the geographic area in which that CMRS provider provides wireless service, either directly or in concert with other CMRS providers, or (b) any geographic area designated by a state or federal court or regulatory authority of competent jurisdiction as the bounds of local calling scope for any CMRS provider.**

This would give CMRS providers in an otherwise geographically unregulated area the ability to determine their own local calling scope, while nevertheless maintaining regulatory parity, so long as regulatory or court-imposed restrictions exist on any CMRS provider. Should the MFJ court ultimately remove, waive, or modify the equal access obligations currently imposed upon Bell Company cellular affiliates, this proposed rule would ensure that the Commission does not continue to impose arbitrary geographic equal access requirements on CMRS providers, thus automatically taking into account the "evolving nature of competition in commercial radio services generally."<sup>107</sup>

**D. CMRS Providers Should Be Permitted to Meet Their Equal Access Obligations Through the LEC's Access Tandem**

Comment is also sought on whether a CMRS provider should be required to convert to equal access upon receipt of a *bona fide* request by an IXC, or whether the Commission should establish a standard by which a CMRS provider could refuse to provide equal access.<sup>108</sup> BellSouth believes that the obligation of a CMRS carrier to provide equal access should be invoked upon receipt of a *bona fide* request by an IXC. A CMRS provider, however, should have the *option* of fulfilling the

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<sup>107</sup> Notice, Separate Statement of Commissioner Rachelle B. Chong at 1.

<sup>108</sup> Notice at ¶ 55.

obligation by either arranging with the LEC to provide equal access service or by constructing an equal access system.

**E. CMRS Providers Should Be Authorized to Recover the Cost of Equal Access Conversion**

The Commission also seeks comment as to whether CMRS providers should be able to recover their reasonable costs of converting to equal access.<sup>109</sup> The Commission has previously allowed LECs to recoup certain costs incurred in converting to equal access through a conversion charge assessed on IXC's,<sup>110</sup> and has held that cellular carriers are entitled to just and reasonable compensation for their provision of access.<sup>111</sup> In line with these decisions, BellSouth agrees with the Commission's tentative conclusion that CMRS providers should be allowed to recover the cost of their conversion to equal access. CMRS providers should also have the opportunity, however, to receive reasonable compensation for the ongoing provisioning of equal access service, which would include administrative functions, customer inquiries, switch usage, and other value added services.

**CONCLUSION**

Based on the foregoing, BellSouth urges the Commission to adopt the rules and policies governing CMRS interconnection, resale, and equal access set forth above.

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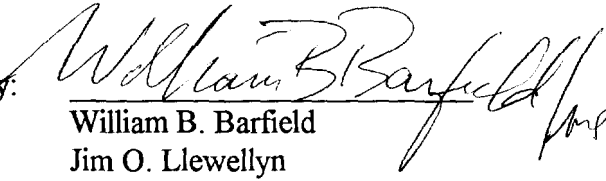
<sup>109</sup> *Id.* at ¶¶ 94-95.

<sup>110</sup> *MTS and WATS Market Structure, Amendment of Part 69 of the Commission's Rules for Recovery of Equal Access Costs*, CC Docket No. 78-72, *Report and Order*, 4 FCC Rcd. 2104 (1989).

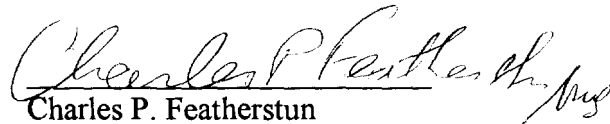
<sup>111</sup> *Interconnection Order*, 2 FCC Rcd. at 2915.

Respectfully submitted,

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September 12, 1994

Certificate of Service

I, Mary Jane Adcock, hereby certify that on this 12th day of September, 1994, copies of the foregoing "Comments of BellSouth" were served by hand on the following:

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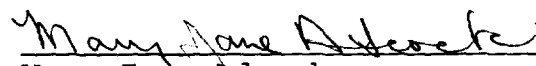
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